

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

ROBERT EARL O'DELL,

No. CV-09-245-ST

Petitioner,

ORDER

v.

PAULA MYERS,

Respondent.

Tonia L. Moro
Assistant Federal Public Defender
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Portland, Oregon 97204

Attorney for Petitioner

John R. Kroger
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Attorneys for Defendants

HERNANDEZ, District Judge:

Magistrate Judge Janice M. Stewart issued a Findings and Recommendation (#40) on January 31, 2011, in which she recommends I deny the Amended Petition for Writ of Habeas Corpus (#13) and enter a judgment dismissing this case with prejudice. She also recommends I decline to issue a Certificate of Appealability on the basis that petitioner has not made a substantial showing of the denial of a constitutional right pursuant to 28 U.S.C. § 2253(c)(2).

Petitioner timely filed objections to the Findings and Recommendation. The matter is now before me pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b).

When any party objects to any portion of the Magistrate Judge's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1); Dawson v. Marshall, 561 F.3d 930, 932 (9th Cir. 2009); United States v. Reyna-Tapia, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc).

I have carefully considered petitioner's objections and conclude the objections do not provide a basis to modify the Findings and Recommendation. I have also reviewed the pertinent portions of the record *de novo* and find no error in the Magistrate Judge's Findings and Recommendation.

2 - ORDER

CONCLUSION

I ADOPT Magistrate Judge Stewart's Findings and Recommendation (#40).

Accordingly, I deny petitioner's Amended Petition for Writ of Habeas Corpus (#13) and enter a judgment dismissing this case with prejudice. I also decline to issue a Certificate of Appealability on the basis that petitioner has not made a substantial showing of the denial of a constitutional right pursuant to 28 U.S.C. § 2253(c)(2).

IT IS SO ORDERED.

DATED this 11th day of March, 2011.

/s/ Marco Hernandez
MARCO HERNANDEZ
United States District Judge